



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Artisan Electronics Corporation

File: B-231700

Date: August 23, 1988

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### DIGEST

Protest that agency improperly awarded a contract for electric relays under a small business set-aside to a firm that proposed a price allegedly in excess of the item's fair market price is denied, since the agency's determination, in accordance with governing procurement regulations, that the awardee's offered price did not exceed the fair market price, was reasonable.

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### DECISION

Artisan Electronics Corporation protests the award of a contract to Magnecraft Electric Company under Department of the Air Force request for proposals (RFP) No. F04606-88-R-29134 for 132 electric relays for a radar system. Artisan argues that the contract price is more than the fair market price of the item.

We deny the protest.

The RFP, issued on April 1, 1988, was set aside for small business concerns. The Air Force received two offers, one from Magnecraft, a small business, and one from Artisan, a large business. Magnecraft submitted an offer of \$365.75 per unit; Artisan offered \$265.00 per unit. Artisan's proposal was nonresponsive, however, since Artisan certified that it was other than a small business. The Air Force compared Magnecraft's price with the firm's price under a prior contract for the item, also solicited under a small business set-aside, as adjusted for quantity and inflation. The agency determined that Magnecraft proposed a fair and reasonable price and, on May 31, awarded the contract to that firm.

Artisan argues that Magnecraft's price is excessive and that Artisan's offer represents the fair market price for the relays. Artisan contends that the contract therefore should

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be canceled and the requirement resolicited on an unrestricted basis.

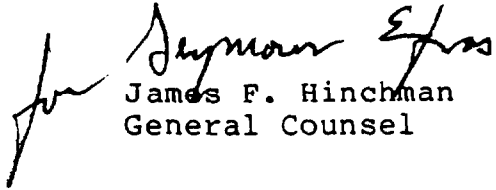
According to Federal Acquisition Regulation (FAR) § 19.501(j) (FAC 34-37), a contract may not be awarded under a small business set-aside if the cost to the agency exceeds the item's fair market price. FAR § 19.001 (FAC 84-31) defines fair market price as a price based on reasonable costs under normal competitive conditions, and not on the lowest possible cost. FAR § 19.202-6 directs agencies to determine fair market price in accordance with FAR § 15.805-2 (FAC 84-35), which permits a contracting officer to select whatever price analysis technique will ensure a fair and reasonable price, including a comparison of proposed prices received in response to the solicitation, a comparison of prior proposed or contract prices with current proposed prices, and a comparison with independent government cost estimates. In view of the largely discretionary nature of a determination as to fair market price, our Office will not question an agency's judgment in that regard as long as it is reasonable and there is no showing of agency fraud or bad faith. Cherokee Enterprises, Inc., B-228330, Dec. 4, 1987, 87-2 CPD ¶ 552.

The Air Force reports that the prior contract, awarded September 10, 1986, was split between Magnecraft, for 269 units at \$299.42 each, and Aero Support, Inc. for 37 units at \$285.00 each. A third offeror proposed a price of \$355.00 per unit. Magnecraft had also received a 1984 contract for 72 units at \$346.35 per unit and a 1983 contract for 104 units at \$236.05 per unit. The Air Force asserts that, as allowed by the FAR, it compared Magnecraft's current offered price of \$365.75 per unit with Magnecraft's previous contract price, adjusted for the effect of the break in production, for inflation, and for the 50 percent reduction in quantity as compared to the 1986 contract. The estimated price for the electric relays was \$366.91 per unit.

We find that the Air Force's judgment as to whether Magnecraft's price represented a fair market price for electric relays was reasonable under the circumstances of this case. As indicated above, the FAR specifically recognizes that the fair market price is not the lowest possible price, FAR § 19.001, and the Air Force determined the fair market price for the relays in accordance with FAR § 15.805-2, which instructs the contracting agency on how to make sure it is obtaining a fair and reasonable price, by comparing Magnecraft's price with prior proposed and contract prices and adjusting it for inflation and quantity. In addition, Magnecraft's price compared

favorably with the government estimate for the relays. Furthermore, since Artisan knew when it submitted its bid that it would be ineligible for award as a large business, the contracting officer was justified in not relying on Artisan's bid as the deciding factor in the determination of the reasonableness of the Magnecraft price.

The protest is denied.

for  
James F. Hinchman  
General Counsel